MST

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2657 OF 2004
IN
FIRST APPEAL NO.505 OF 2007

The New India Assurance Co.Ltd. Appellant
versus
Charudatta M. Gaikwad & ors. Respondents

Mr.Sarojini Patil i/by Singhania & Co. for appellant.

Mr.S.V.Sadavarte for respondent no.1.

CORAM : A.S.OKA, J.

DATE : 01st March 2007

PC :

1. Heard advocates for the parties. The first submission made is that the vehicle concerned was not validly insured with the applicant. There is no merit in the said submission in view of what is observed in paragraph no.6 of the impugned judgment. The second submission is that there is no evidence led by the claimant to show that he was a student of First Year MBA course.

2. The Tribunal has accepted the case that at the time of the accident the age of the first respondent was 21 years and he was undertaking MBA course. In fact a finding is recorded that

even after undergoing amputation of right leg above the knee, the first respondent completed the MBA course and secured 60% marks. The Trial Court has noted that such serious permanent disability has affected the career of a bright student. The Tribunal has awarded the compensation on usual grounds and apart from that compensation he has been awarded an amount towards costs of artificial limb. Prima facie, it appears to me that the quantum of compensation is on the higher side. However, first respondent will have to be permitted to withdraw a substantial amount considering findings recorded by the Tribunal. I therefore pass following order.

3. ORDER :-

a) Civil Application is allowed in terms of prayer clause (a) subject to applicant depositing the entire amount due and payable under the impugned award with the concerned Tribunal within a period of six weeks from today;

b) If compliance of term (a) above is not made, interim relief will stand vacated without further reference to the Court;

c) If compliance is made, the Tribunal will permit the first respondent to withdraw a sum of Rs.3.25 lakh (Rs.Three lakh twenty five thousand only) without security subject to giving an undertaking to repay the said amount in case the applicant succeeds in the appeal;

d) The Tribunal will permit the first respondent to withdraw a further amount of Rs.1.00 lakh (Rs.One lakh only) on furnishing adequate security for the said amount;

e) Rest of the amount shall be deposited in the fixed deposit in any nationalised bank and the fixed deposit shall be renewed from time to time till final disposal of the first appeal;

f) First respondent shall be entitled to withdraw 50% of the interest accrued on the fixed deposit;

g) There will be no order as to costs.

(A.S.OKA, J.)